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JAN 26 1998

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Federal Communications Commission
Office of Secretary

Petition of Bell Atlantic Corporation)
for Relief from Barriers To Deployment)
of Advanced Telecommunications Services)

CC DOCKET NO. 98-11

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PETITION OF BELL ATLANTIC

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Introduction and Summary

Section 706 of the Telecommunications Act of 1996 requires the Federal Communications Commission to take steps, particularly deregulatory steps, to speed up the deployment of high-speed broadband services for all Americans. Congress recognized that regulatory policies designed for circuit-switched voice networks could impede investment in packet-switching technologies and facilities needed to provide high-quality video, data, voice, and graphics. The slow pace at which high-speed broadband services are becoming available to Americans today, two years after passage of the Act, confirms that existing regulatory restrictions have slowed investment in the necessary advanced services.

As key universities, including Virginia Tech, the Massachusetts Institute of Technology, and Brown University, and the New York nonprofit consortium NYSERNET, can attest from firsthand experience, the Internet backbone in its current form cannot carry high-quality, high-speed data traffic. Existing backbone suppliers have not upgraded their networks fast enough to meet the demand. Traffic crawls across the backbone at an average speed of less than 40 kilobits per second -- one-third the speed currently available through local Integrated Services Digital Network (ISDN) lines deployed by Bell Atlantic throughout

its service area, and less than one hundredth the speeds that the various Digital Subscriber Line (xDSL) and advanced fiber technologies ready for deployment will provide. No alternatives to the Internet backbone make up for the backbone's deficiencies.

At the same time, new generations of high-speed data services are being tested and rolled out. But the investments required are substantial. The investments also are fraught with risk, as different technologies are competing (cable modems, xDSL, wireless data), consumer demand at various prices is highly uncertain, and the real-world functionalities of various services are hobbled by slowdowns on the Internet backbone. As a Commission working paper explains, "[h]igher-bandwidth access to the Internet will be meaningless if backbone networks cannot provide sufficient end-to-end transmission speeds."¹ Thus, because data-transmission capacity is deficient, investment in the risky, large-scale effort to implement related new services is stunted.

The Commission can and should address both of these problems through deregulatory steps: it should fully deregulate packet-switched networks and thus hasten deployment of high-speed broadband services to all Americans. Such steps would accord with congressional and Commission policy. Congress stated in the 1996 Act that the Internet should be promoted and not be subject to Federal and State regulation. 47 U.S.C. § 230(b)(1) & (2). The Commission has noted: "our existing rules have been designed for traditional circuit-switched voice networks, and thus may hinder the development of emerging packet-switched

¹ Kevin Werbach, "A Digital Tornado: The Internet and Telecommunications Policy," Office of Plans and Policy Working Paper at 54 (March 1997) ("OPP Paper"). The paper further notes that "the expansion of bandwidth available to end-users will only increase the congestion pressure on the rest of the network." Id.

networks.”²

Bell Atlantic hereby requests relief from restrictions impeding its expansion and offering of high-speed, packet-switched data services, including Internet, “Intranet,” and “Extranet” services. Most importantly:

- The Commission should permit Bell Atlantic to provide high-speed broadband services without regard to present LATA boundaries. The Bell System and the Justice Department created LATA boundaries for the 1983 circuit-switched voice network, assuming all calls are made from one point to another over a dedicated channel. But the very concept of LATA boundaries makes no sense fifteen years later in an Internet, packet-switched world, where neither the consumer nor the phone company may know to what geographic destination the packets are heading. Universities in the Bell Atlantic region support this interLATA relief because they believe Bell Atlantic can play an important role in the success of their initiative to build the next generation Internet (“Internet2”).
- The Commission should permit Bell Atlantic to develop its newer high-speed broadband services that operate at speeds greater than ISDN, including all xDSL services, free from pricing, unbundling, and separations restrictions designed for voice calls. Specifically, Bell Atlantic should not be subject to the investment-detering requirement of mandatory access by competitors to such services on a discounted

² Notice of Inquiry, In the Matter of Usage of the Public Switched Network by Information Service and Internet Access Providers, CC Docket No. 96-263, 311 (rel. Dec. 24, 1996). A Commission working paper on the Internet similarly points out that packet-switched data networks defy the old regulatory paradigms that apply to voice networks. OPP Paper at ii.

wholesale basis or to the required electronics (which competitors can independently acquire and attach) as unbundled network elements. Finally, the Commission also should permit sale of such new services outside otherwise-applicable price-cap and separate affiliate rules. Investment is dampened if subject to rules that require Bell Atlantic to incur the risk for more aggressive deployment of xDSL and advanced fiber technology but then share with its competitors any reward from success. The Commission also should permit sale of such new services outside otherwise-applicable price-cap and separate affiliate rules.

This relief, targeted at the broadband world, would serve the fundamental congressional policy of encouraging the rapid deployment of new telecommunications technologies, both through directly authorized investment by Bell Atlantic and through the spur to other competitors provided by Bell Atlantic's authorized role. Most immediately, this relief would enable Bell Atlantic to proceed with current plans to build a regional backbone network, capable of providing xDSL or fiber-based services, that passes most homes in the major markets in its region – increasing backbone capacity and bandwidth to the home. More generally, the relief would allow the development of broadband services in the marketplace to be market-driven, freed from investment-inhibiting regulatory restrictions in accord with Congress's mandate.

I. The Commission Has Authority To Grant the Requested Relief.

The Telecommunications Act of 1996, in its very title, states that it is “[a]n Act to promote competition and reduce regulation in order to secure lower prices and higher quality

services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies." Pub. L. No. 104-104, 110 Stat. 56 (1996) (emphasis added). To give effect to the underscored aspects of the policies embedded in the statutory title, Section 706(a) of the 1996 Act (codified at 47 U.S.C. § 157 note) states that "[t]he Commission . . . shall encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans . . . by utilizing, in a manner consistent with the public interest, convenience, and necessity, price cap regulation, regulatory forbearance, measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment."³ The section defines "advanced telecommunications capability" to mean "high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video communications." § 706(c). By its terms, Section 706(a) takes effect immediately. In addition, Congress commanded that the Commission undertake an inquiry, no later than 30 months after the 1996 Act's enactment and regularly afterwards, to determine "the availability of advanced telecommunications capability to all Americans." § 706(b). If such capability is

³ The same provision directs "each State commission with regulatory jurisdiction over telecommunications services" to carry out the same function. Section 706(a).

The present application involves authority of Bell Atlantic Corporation's telephone companies and other subsidiaries to provide interstate services. See, e.g., MTS and WATS Market Structure, 97 FCC 2d 682, 715 (1983) (enhanced service providers offer "jurisdictionally interstate communications" but are exempt from interstate access charges); 47 C.F.R. 64.702(a) ("enhanced services shall refer to services, offered over common carrier transmission facilities used in interstate communications"); First Report and Order, Access Charge Reform, CC Docket No. 96-262, ¶ 341 n.498 (rel. May 16, 1997) ("The term 'enhanced services,' which includes access to the Internet and other interactive computer networks, as well as telemessaging, alarm monitoring, and other services, appears to be quite similar to the term 'information services' in the 1996 Act."). There is accordingly no question as to the Commission's jurisdiction under Section 2(b) of the Communications Act, 47 U.S.C. 152(b).

not “being deployed to all Americans in a reasonable and timely fashion,” the Commission “shall take immediate action to accelerate deployment of such capability by removing barriers to infrastructure investment and by promoting competition in the telecommunications market.” Id. (emphasis added).

Section 706 grants the Commission broad authority to use deregulatory tools when the specified standards are met, namely, when the requested forms of deregulation would accelerate deployment of advanced telecommunications services for all Americans. Indeed, the provision goes beyond conferring authority. It imposes on the Commission the duty to take such action when the standards are not met. The provision uses the language of command: the Commission “shall” take the deregulatory steps to promote rapid and reasonable availability of advanced services. Compare 47 U.S.C. § 254(b)(1)-(7) (“should”). Moreover, Section 706 does not narrowly restrict the permissible tools available to accomplish the stated objective. To the contrary, it lists specified types of deregulating methods and then, in a catchall provision, broadly directs the Commission to use any “regulating methods” to fulfill the statutory mandate, including ones “other” than those specifically listed.

The legislative history of the Telecommunications Act of 1996 confirms the breadth and importance of the Commission's mandate under Section 706. The Conference Report (H.R. Conf. Rep. 104-458, 104th Cong., 2d Sess. 113 (1996)) states that the overall purpose of the 1996 Act was “to provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition.” As to Section 706 particularly, the Conference

Report notes that the provision essentially adopts Section 304 of the Senate bill, which “ensures that advanced telecommunications capability is promptly deployed by requiring the Commission to initiate and complete regular inquiries” and, if the Commission “makes a negative determination” about whether such advanced capability “is being deployed in a ‘reasonable and timely fashion,’” the Commission “is required to take immediate action to accelerate deployment.” Id. at 210 (emphasis added). “Measures to be used include: price cap regulation; regulatory forbearance; and other methods that remove barriers and provide the proper incentives for infrastructure investment.” Id. (emphasis added).

The Senate Report (S. Rep. 104-23, 104th Cong., 1st Sess. 50 (1995)) stated that Section 304 was “intended to ensure that one of the primary objectives of the bill--to accelerate deployment of advanced telecommunications capability--is achieved,” consistent with the overall Act’s intent “to establish a national policy framework designed to accelerate rapidly the private sector deployment of advanced telecommunications.” The Report continued: “More specifically, the bill’s goal is ‘to promote and encourage advanced telecommunications networks, capable of enabling users to originate and receive affordable, high-quality voice, data, image, graphics, and video telecommunications services.’” Section 304 thus required the Commission to “initiate and complete inquiries, at least every few years . . . to determine whether advanced telecommunications capability is being deployed in a ‘reasonable and timely fashion,’” including whether “equipment needed to deliver advanced broadband capability” is available “at reasonable cost.” Id. (emphasis added). “If the FCC makes a negative determination, it is required to take immediate action to accelerate deployment. Measures to be used include: price cap regulation, regulatory forbearance, and other methods that remove

barriers and provide the proper incentives for infrastructure investment.” Id. The Senate Report concluded (id. at 51):

The goal is to accelerate deployment of an advanced capability that will enable subscribers in all parts of the United States to send and receive information in all its forms--voice, data, graphics, and video--over a high-speed switched, interactive, broadband, transmission capability.

The Commission, in fact, has recognized its responsibilities and expressed its commitment to promote development of Internet and other broadband services. “Section 706 does not require that the FCC wait two and a half years before trying to explore ways to deliver advanced telecommunications services to all America, especially including rural America. . . . [W]e are very mindful of the urgency of this matter.”⁴ The Commission has acknowledged its commitment to “facilitat[ing] the development of the high-bandwidth data networks of the future” and to “creat[ing] incentives for the deployment of services and facilities to allow more efficient transport of data traffic to and from end users,” such as removing obstacles to LECs’ “deploying hardware to route data traffic around incumbent LEC switches” or “installing new high-bandwidth access technologies such as asymmetric digital subscriber line (ADSL) or wireless solutions.”⁵

Key members of the Administration, including President Clinton, also have explicitly endorsed deregulation as a means to foster investment in advanced telecommunications infrastructure. In July 1997, the President announced A Framework For Global Electronic

⁴ Testimony of Reed E. Hundt, Chairman, Federal Communications Commission before the Senate Commerce, Science and Transportation Committee, S. Hrg. 104-623, FCC Oversight & Implementation of the Telecommunications Act of 1996 (June 18, 1996).

⁵ Notice of Inquiry, In the Matter of Usage of the Public Switched Network by Information Service

Commerce,⁶ which states as its very first principle that “the private sector should lead” in the development of the Internet, and that “[i]nnovation, expanded services, broader participation, and lower prices will arise in a market-driven arena, not in an environment that operates as a regulated industry.”⁷ Ira Magaziner, the principal author of the Framework, recently reiterated this message: “The notion of government protection through regulation, which served us well in the industrial age, might not be the right paradigm for the digital age.”⁸ Joseph Farrell, during his term as Chief Economist of the FCC, similarly advocated that “[d]eregulation of innovation may be particularly important. . . . Sometimes, in some industries, innovation is driven by large incumbents, who alone have the expertise to innovate or the complementary assets that let them exploit bright ideas. Then it’s important not to mar their incentives to innovate.”⁹ Finally, the Department of Justice recently authorized the merger of the backbone networks of America OnLine, Compuserve and WorldCom’s UUNet,¹⁰ another clear sign that the Administration wishes to minimize its interference in the

and Internet Access Providers, CC Docket No. 96-263, ¶¶ 311, 313 (rel. Dec. 24, 1996).

⁶ President William J. Clinton and Vice President Albert Gore, Jr., A Framework For Global Electronic Commerce (July 1, 1997).

⁷ Id. The Administration has allocated \$100 million in FY 1988 for the “Next Generation Internet” Initiative, an ambitious attempt to accelerate the creation of much faster broadband networks. <http://www.ngi.gov>

⁸ Marcel Michelson, Magaziner Urges Antitrust Law Rethink For Internet, Reuters, November 6, 1997 (reprinted at www.yahoo.com/headlines/971106/wired/stories/magaziner_1.html).

⁹ Competition, Innovation and Deregulation, Speech by Joseph Farrell, FCC Chief Economist, at Merrill Lynch “Telecommunications CEO Conference”, New York, March 19, 1997.

¹⁰ “U.S. Lets Compuserve Merger with AOL”, Reuters, November 10, 1997.

development of the nation's advanced telecommunications infrastructure.¹¹

Lifting the various regulatory barriers to Bell Atlantic's ability to invest in Internet backbone and other packet-switching facilities would directly "remove barriers to infrastructure investment" that is critical to provide all Americans with timely, meaningful access to advanced services." Section 706 specifically authorizes the use of "regulatory forbearance" to speed investment in high-speed broadband services. Section 706's grant of forbearance authority for this targeted purpose is separate from, independent of, but consistent with the generic forbearance provision of the Telecommunications Act, Section 10, 47 U.S.C. § 160. Section 10(a) provides a generic directive to the Commission to "forbear from applying any regulation or any provision of t[he Telecommunications] Act to a telecommunications carrier or telecommunications service" on flexible grounds. 47 U.S.C. 160(a). Section 10(c) adds that this otherwise-sweeping forbearance authority may not be invoked to forbear from applying Section 271 or parts of Section 251. 47 U.S.C. 160(d) ("Except as provided in section 251(f), the Commission may not forbear from applying the requirements of section 251(c) or 271 under subsection (a) of this section until it determines that those requirements have been fully implemented.") (emphasis added). By its terms, however, that proviso is an exception only to the Commission's forbearance authority under Section 10(a): Congress's addition of the underlined words confirms the congressional contemplation of other forbearance authority, such as the specific authority to promote investment in advanced telecommunications infrastructure addressed by Section 706. The

¹¹ WorldCom's aggregation of backbone power is being investigated in the context of the WorldCom/MCI merger, which as Bell Atlantic and others have argued in CC Docket. 97-211 is not in

underlined words would be rendered meaningless and unnecessary if Section 10(c) were read as a bar to any Section 271 or 251 forbearance.

The Commission has additional authority as well, supplemental to Section 706, for the relief requested here. For example, the Commission may grant relief from the unbundled-element requirements of Section 251, as applied to specified advanced electronics, under its focused Section 251(d) authority to “determin[e] what network elements should be made available for purposes of subsection (c)(3).” 47 U.S.C. § 251(d)(2). The price-cap relief is within the Commission’s broad price-regulation authority under Section 201, 47 U.S.C. § 201. And relief from current LATA boundaries for broadband services and packet-switched data traffic is authorized by Section 3(25)(B) of the Telecommunications Act, 47 U.S.C. § 153(25)(B), which expressly permits the Commission to approve modifications of a “local access and transport area” or “LATA,” just as the district court itself prior to 1996 approved numerous modifications of the LATA boundaries where the relief enabled the provision of new services like wireless services over larger geographic areas.¹² This statutory authority,

the public interest.

¹² Modifications of LATA boundaries were granted under the MFJ for specified purposes, particularly to make possible the speedier development of new telecommunications services or increased competition. E.g., United States v. Western Elec. Co., No. 82-0192 (D.D.C. Apr. 28, 1995) (wireless services); United States v. Western Elec. Co., 1986-1 Trade Cas. &67,148 (paging services); United States v. Western Elec. Co., No. 82-0192 (D.D.C. Feb. 26, 1986) (paging services); United States v. Western Elec. Co., 1987-1 Trade Cas. (CCH) &67,452 (cellular services); United States v. Western Elec. Co., No. 82-0192 (D.D.C. Feb. 18, 1993) (cellular services); United States v. Western Elec. Co., No. 82-0192 (D.D.C. Sept. 20, 1994) (video and audio programming by satellite and other means); United States v. Western Elec. Co., No. 82-0192 (D.D.C. Sept. 21, 1993) (cable service); United States v. Western Elec. Co., No. 82-0192 (D.D.C. Oct. 24, 1994) (same); see also United States v. Western Elec. Co., No. 82-0192 (D.D.C. Nov. 14, 1988); United States v. Western Elec. Co., No. 82-0192 (Feb. 15, 1991); United States v. Western Elec. Co., No. 82-0192 (May 11, 1994); United States v. Western Elec. Co., 604 F. Supp. 256, 261 (D.D.C. 1984).

building on the pre-1996 Act tradition, encompasses the power to modify Bell Atlantic's LATAs for the defined purpose of encouraging the speedier development of high-speed broadband and packet-switched data-service capability. Indeed, it is peculiarly appropriate that a service like Internet access should be treated as occurring within one large access area, for, even though such calls are interLATA in nature, end-users treat their logging on to the Internet as a single "call" with the whole Internet and thus within their calling area, no matter where their call connects them as they click on varying Web sites during the time they are on line.¹³

II. The Relief Requested Would Promote Needed Deployment of and Competition in Advanced Telecommunications Services.

A. The most easily documented problem, as explained in detail in Attachment B, is that packet-switched data networks, particularly those carrying Internet traffic, today fall far short of what former Chairman Hundt recently described as the Commission's objective: a "high-speed, congestion-free, always reliable, friction-free, packet switched, big bandwidth, data friendly network that is universally available, competitively priced, and capable of driving

¹³ As noted *supra* note 3, the Commission has recognized that in circuit-switched network terminology most Internet calls are "interLATA." A local voice call over a traditional circuit-switched network differs from an Internet "call" in at least two respects. First, a voice call from A to B will, for the duration of the call, use a single circuit from A to B. An Internet "call," by contrast, will typically involve numerous clicks on various web sites located in various places, potentially around the world, and thus a single Internet "call" will involve a series of changing internal computer-to-computer network links between varying places. Second, a voice call in a local area tends to involve a point-to-point connection along a well-defined circuit in that local area. An Internet "call" tends to involve access between unpredictable physical locations, as the network uses varying paths to send its packets, not over a single path between "calling" computer and "receiving" computer. Thus, an Internet user's logging-on is viewed by the user as a single call with the whole Internet. See, e.g., J. Rickard, *Internet Architecture*, Boardwatch Magazine Directory of Internet Service Providers, July/Aug. 1997, at 8 (describing mechanics of interconnection of users and data through Internet).

our economy to new heights.”¹⁴ The existing data networks sorely need increased investment for higher speeds and greater capacity, particularly at the “backbone” level that is interLATA in nature. Congestion on the existing networks is dramatic enough that alternative data networks are today being established by universities (Internet2) as well as by the federal government (Next Generation Internet). See Attachment B at 4.

The core of the problem lies in the limited capacity of the backbone networks. Because of burgeoning traffic, average speeds for transport across backbone networks are only in the range of 40 kilobits per second (kbps), less than the 128 kbps speed of the ISDN services Bell Atlantic has made available to well over 90% of its customers and much less than speeds of the xDSL, cable-modem, and other technology now being deployed. See Attachment B at 12.

With the backbone infrastructure choked at the lower speeds, the investment-inhibiting effects cascade down through all the steps needed for data transmission: there is little point in consumers using higher speed modems or higher speed services like xDSL if the backbone network slows their transmission to lower speeds anyway. Absent major new investment, as customers begin to access the Internet at xDSL and cable modem speeds, the Internet backbone will become more congested, not less.

Rather than racing to add critically needed capacity, the incumbent providers are racing to consolidate and focus on business customers.

- Consolidation. WorldCom is acquiring MCI. WorldCom owned UUNet and recently bought the Compuserve and ANS networks. This merger of four key backbones will give WorldCom a dominant position in the Internet, serving roughly 60% of all U.S.

¹⁴ “The Internet: From Here to Ubiquity,” Speech by FCC Chairman Reed E. Hundt, The Institute of Electrical and Electronics Engineers, The Symposium on Hot Chips, Aug. 26, 1997.

commercial traffic on the Internet.¹⁵ The largest ISPs -- AOL, Microsoft's MSN, Compuserve -- will all be served by WorldCom. See Declaration of Thomas Hazlett, Attachment A.

- Business Customer Focus. WorldCom's Vice Chairman stated flatly that "[o]ur strategy is not in the consumer business,"¹⁶ although WorldCom later softened this statement after public controversy. Other observers have noted that WorldCom has a well-recognized "[b]usiness customer focus" in "major U.S. and international cities."¹⁷ And while AT&T recently announced it "plans to become the leading Internet provider for business . . .,"¹⁸ its residential plans consist of upgrading its "WorldNet" Internet Service to 56K technology -- half of what ISDN offers -- by June 1998. Indeed, the Internet efforts of AT&T and MCI, despite initial promise, have dwindled--perhaps because ordinary circuit-switched long-distance traffic (e.g., to an 800 number of a business) can be displaced by Internet traffic (e.g., an e-mail or Web-page visit to that business).

The result is that the primary nodes for the backbone, the high-capacity transport lines, and high-speed routers are concentrated in a relatively small number of large cities, leaving other Internet users in other cities with even lower quality (less than 40 kbps service. See Attachment B at 41-42. Substantial new investment by new companies with different incentives is needed to create the universally high-quality Internet access for "all Americans" contemplated by Congress.

In addition to the problem of limited transmission capacity on the Internet backbone (and similar packet data networks such as Internet2), there is the problem of dampened

¹⁵ Bell Atlantic, Petition to Deny the Application of WorldCom or, in the Alternative, To Impose Conditions, CC Docket No. 97-211 (Jan. 5, 1998).

¹⁶ M. Mills, "WorldCom Would Shift MCI's Focus," Washington Post, Oct. 3, 1997 at A1.

¹⁷ S. Comfort, et al., Morgan Stanley, Dean Witter, Co. Report No. 2556537, WorldCom Inc. at 15 (June 3, 1997).

¹⁸ AT&T New Release, "AT&T Announces Business-Quality IP Services, IP Backbone, and More," Oct. 8, 1997.

incentives to invest in full-scale deployment of the newer generations of high-speed services, such as xDSL. The costs of development, testing, and deployment are very large. The risks are commensurately large, as consumer demand for such new services at various prices is untested--and as the providers and consumers of newer high-speed services face uncertainty about the adverse effects that the currently severe constraints on backbone transmission capacity will have on the actual functioning of such new services. The pace of investments in the full deployment of such services is lessened by such risks.

B. As the attached letters from MIT, Boston University, Brown, West Virginia University, Virginia Tech, and other universities in our area show, Bell Atlantic has proven ability to execute advanced telecommunications projects. Bell Atlantic invests well over \$5 billion each year in capital improvements. And it has unexcelled expertise in network design and construction.

Unlike its competitors, Bell Atlantic has a proven track record in providing higher-speed data services to residential and lower density areas. As evidenced by the availability of ISDN to well over 90% of its service areas, Bell Atlantic has a longstanding and continuing commitment to serving all its customers, and making available to them the advanced telecommunications services that other companies target at selected segments of the market. See Attachment B at 37-52. Bell Atlantic's entry into the xDSL and backbone areas would make an unmistakable contribution to implementing the stated congressional policy of making advanced telecommunications services rapidly available to "all Americans." § 706(a).

Bell Atlantic thus has a unique incentive to improve high-speed, packet-switched, data-network capacity -- it wants to expand the market for high speed local access products like

xDSL in the residential market. The current congestion in the Internet backbone and other data-transmission networks limits the usefulness of services Bell Atlantic already makes available, or plans to make available, to its customers, including xDSL and ISDN services, because those services do not provide what they can as long as there are slowdowns anywhere in the data networks to which they connect. Increasing capacity and speed on such networks would improve Bell Atlantic's ability to sell xDSL, ISDN, and other such services to its customers. As Boardwatch Magazine's editor noted, "increasing bandwidth to the home or office beyond ISDN speeds will probably not improve the Web experience for end users until backbone connectivity improves dramatically. . . . With most of the backbones, the current crop of new 56 Kbps modems pretty much gives you what you're going to get This information is going to wreck a lot of business plans because, when the word gets out that increasing bandwidth won't do much for you, customers will opt for the cheaper dial-up route even after higher speeds are available."¹⁹

Such network improvements also would expand Bell Atlantic's ability to sell other complementary products to consumers. These include not just xDSL services, but also the second or third lines that consumers often seek for their Internet services. Additional incentive to invest would come from the resulting boost to Bell Atlantic's own Internet-access service itself, which has been uniquely hobbled by the fact that the customers of Bell Atlantic, unlike other providers, must obtain a separate interLATA provider.

¹⁹ Press Release, "First Independent Ranking of Internet Backbones Rates Compuserve Tops in Performance," (June 25, 1997) at <http://www.keynote.com/company/announcements/pr062597.html>.

Moreover, Bell Atlantic has a compelling, and ever growing, interest in expanded data-network capacity to preserve the proper functioning of its voice networks. Bell Atlantic's incentive to upgrade data networks is already measured in the nearly \$600 million dollars spent in the last two years to alleviate crowding on the voice network. That incentive will only get larger. Expanded packet-switching capacity would allow data traffic to be re-routed onto such networks in order to relieve the burdens on the local voice networks caused by increased use of on-line services. MCI found out the hard way that data traffic burdens voice networks and so summarily cut off local service recently to an information service provider in Minneapolis.²⁰

C. The relief sought here is needed to encourage advanced telecommunications capabilities. In addition to the interLATA relief that would make Bell Atlantic's desired role possible, relief from competitor-access, price-cap, and separate affiliate restrictions is also needed. The investments required for Bell Atlantic to carry out its plan are both substantial and fraught with risk. Such investments are less likely to be made if the reward must be shared with non-investors through the competitor-access requirements, or if the resulting services must be priced at artificially limited prices (in a market that Bell Atlantic must break into as a new entrant having to compete with other established firms).²¹ See Attachment B at

²⁰ "US Internet Only Provider Cut Off in Minneapolis, Saint Paul, Minn. MCI Network Overload," http://biz.yahoo.com/prnews/97/11/06/mcic_x000_3.html. Bell Atlantic has not had to resort to such extreme measures because it has made the necessary investments to accommodate ISP traffic.

²¹ See FCC Drafting Rule Proposal To Address ILECs' Innovation Concerns, Communications Today (Sept. 17, 1997) (Speaking at a Network Reliability and Interoperability Council (NRIC) forum in Reston, Va., [Chairman] Hundt acknowledged the ILECs' argument that "under the current rules they have little reason to invest heavily in new features when they must then provide them to competitors at a discount. . . . It is going to be necessary that we create economic incentives for the telephone companies

15-17. Separate affiliate restrictions that hamper the efficient deployment of an advanced network further lessen the attractiveness of broadband investments.

None of Bell Atlantic's competitors must share or limit profits from advanced services or provide them through separate affiliates. The Commission has permitted monopoly cable companies to invest in cable modems without any regulation whatsoever.²² Similarly, wireless data companies like Metricom and satellite providers such as DirecPC which provide or will provide high-speed data service have no investment-detering handicaps.²³ Not surprisingly, competitors that are not subject to Section 251 requirements forbid their customers from reselling services at all, let alone at the wholesale discount Bell Atlantic would have to without relief the regulatory relief requested here; DirecPC notes in its most recent ads that its wireless data service is "Not for Resale."

The Commission in other contexts has sped investment in advanced services by deregulating them. The Commission freed interactive cable services from cable rate regulation and any type of Title II regulation on the theory that, "[c]able systems that now offer regulated

that are proprietors of parts of the Internet, particularly the local loop...to upgrade those particular businesses,' Hundt said. The proposed rules, which are in the draft stage, would tell the ILECs that they do not have to share with their rivals the innovative parts of the network that they invest in,' he noted.").

22 The franchise and rate regulations under Title VI of the Telecommunications Act apply only to the provision of "cable service," see 47 U.S.C. " 541, 543, which does not include cable modem service or any other type of two-way, interactive service. See id. at 22(6); see also S. Rep. No. 230, 104th Cong., 2nd Sess., at 169 (1996) (stating that the expansion of the definition of "cable service" to include subscriber interaction required for the "use of video programming or other programming service" was "not intended to affect Federal or State regulations of telecommunications service offered through cable system facilities, or to cause dial-up access to information services over telephone lines to be classified as a cable service.").

23 See e.g., Inquiry Into the Development of Regulatory Policy in Regard to Direct Broadcast Satellites, 90 F.C.C.2d 676, 682 (1982).

service without competition will have an incentive to upgrade their systems with new capabilities and will have an incentive to introduce enhanced functions such as interactivity, that are not subject to rate regulation.”²⁴ Similarly, the Commission freed cellular services from ordinary telephony regulation, with the result that \$37.5 billion has been invested to date in wireless networks.²⁵ It is precisely for such reasons that Section 706 specifically authorizes regulatory forbearance, price cap relief, and other regulating mechanisms to achieve its objectives.

III. The Requested Relief Is Consistent with Other Congressional Policies.

While the relief sought here plainly would advance Section 706's mandate, it would not impede other statutory policies. To begin with, Section 271 is not undermined or compromised by allowing the limited interLATA relief sought here. Even if the present relief is granted, Bell Atlantic will continue to strive to obtain full Section 271 authority. Bell Atlantic would not have agreed to the merger commitments if its strategy were to defer achieving checklist compliance while it enjoys limited high-speed data relief. The traffic volumes affected by the relief requested here are only a fraction of the interLATA traffic volumes for which Bell Atlantic would compete with full Section 271 authority.²⁶ Obtaining

²⁴ Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking, Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992, Rate Regulation, 9 FCC Rec. 4119, 4131 (1992).

²⁵ See CTIA Pegs 12-Month Wireless Capital Investments At More Than \$10 Billion, Wireless Today, October 24, 1997. CTIA, Semi-Annual Check Up Shows Wireless Industry in Vigorous Health, October 26, 1997, reprinted at <http://www.wow-com.com/professional/wirelessdigest/index.cfm>.

²⁶ International Data Corp. has estimated that by the year 2001, packet-switched networks will account for 1% of total long distance voice traffic. E. Savitz, Net Threat, Barron's, October 13, 1997, at 53. Frost & Sullivan has estimated that Internet telephony would be a \$1.9 billion market by 2001 (P.

the present relief thus could not rationally cause Bell Atlantic to dampen its efforts to meet the checklist standards for obtaining full interLATA relief (the requirements, of course, being independently imposed by Sections 251 and 252 anyway). Similarly, the decision to allow the Bell Operating Companies to offer long distance in connection with their wireless business had no effect on Bell Atlantic's pursuit of full interLATA relief.

Furthermore, Bell Atlantic does not have the same alleged anticompetitive potential or unfair or special advantages entering the Internet and high-speed data market the Commission has thought Bell companies might have entering the regular long-distance market. Where the Commission has stated that Bell companies might have a particularly strong base for competition for long-distance, or bundled-service customers, nearly the opposite is true with Internet access, let alone with other high-speed data services. Of the tens of millions of subscribers to Internet access services, less than 500,000 (2.5 percent) subscribe to a BOC service,²⁷ and only about 90,000 are served by Bell Atlantic.²⁸ Thus, whereas the Commission's evaluation of Ameritech's 271 application for Michigan stressed consumer

Britt, Leaps and Bounds, Telephony, August 4, 1997), still tiny compared to estimated overall revenues for the U.S. landline telecommunications market, estimated by International Data Corp. to grow to \$255 billion by 2001 (Landline Revenues to Climb by 2001, Communications Today, Sept. 3, 1997).

The lack of backbone capacity is a major constraining factor (once again). The editor of Boardwatch notes in the November issue that, "[t]o move a paltry 5 percent of voice traffic to the Internet requires at least three times the current Internet backbone capacity. It's probably worth noting the scale of this thing when talking about it. Get ready. This is going to get worse before it gets better." <http://www.boardwatch.com/mag/97/Nov/bwm1.htm>.

²⁷ See EarthLink Pins Growth on Two-Fold Strategy Key Elements Involve Referral, Acquisition Programs, Internet Week, July 14, 1997; R. Krause, Baby Bells Face Dilemma in Speeding Online Access, Investor's Business Daily, Sept. 22, 1997, at A6.

²⁸ Bell Atlantic internal tracking statistics, January 1998.

inertia as a reason for demanding BOC cooperation to enable new entrants “to efficiently switch over customers,”²⁹ any such inertia works against, not in favor of, Bell Atlantic in the present context. The overwhelming dominance of non-BOC providers of Internet services to consumers, together with the host of guarantees of competitors’ access to Bell Atlantic’s networks, erases any otherwise-colorable concerns about interLATA relief here.³⁰

Bell Atlantic’s increased investment would increase overall output of data to customers, and spur competitors to match Bell Atlantic’s offerings by cutting prices and investing more. The access policy of Section 251(c) is centrally concerned with access to those parts of the local voice network that competitors cannot readily duplicate; in contrast, the xDSL, and other advanced services at issue here involve the addition of equipment not associated with the traditional voice switch that any competing local exchange carrier can arrange to attach to the loops and other network elements that are available for rental as unbundled elements. Moreover, as noted, the high-speed data markets are new ones for Bell Atlantic, which is not an incumbent with dominant market share. Perhaps most importantly, there is no “local bottleneck” issue in high-speed data services, as cable companies and wireless and satellite data providers today bypass local telephone networks altogether.³¹

29 In the Matter of Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, As Amended, to Provide In-Region, InterLATA Services in Michigan, CC Docket 97-137, para. 21 (Aug. 19, 1997).

30 For Bell Atlantic, these guarantees include the conditions accepted upon the Commission’s approval of the Bell Atlantic-NYNEX merger in August 1997. See Memorandum Opinion and Order, In the Applications of NYNEX Corporation and Bell Atlantic Corporation For Consent to Transfer Control of NYNEX Corporation and Its Subsidiaries, File No. NSD-L-96-10, && 177-200 (rel. Aug. 14, 1997).

31 @Home notes that it “expects to have access to approximately 50 million homes in North America as a result of its strategic alliance agreement with Cablevision to deliver the @Home high speed

IV. The Commission Should Set an Expedited Schedule for Consideration of This Petition.

Bell Atlantic requests prompt action on this petition. Section 706 of the Telecommunications Act itself stresses the urgency of deploying advanced telecommunications services on a "reasonable and timely basis" (§ 706(a)), requiring "immediate action" upon the Commission's determination that deployment is unreasonably delayed (§ 706(b)). As demonstrated, the chokepoints on the Internet are substantially impeding use of the Internet today: the sooner that these "barrier[s] to infrastructure investment" are removed, the sooner the investment and resulting competition will get under way, and the sooner that benefits will accrue to consumers. Additional reason for expedition comes from the pendency of the WorldCom backbone consolidations. The accumulation of an ever-increasing degree of Internet backbone control generates expanding network-externalities effects that make new entrants' ability to sign up Internet service providers more difficult with time. Grant of the present petition could not be more timely as the Commission considers the issues regarding the consolidation of Internet backbone providers currently before it.

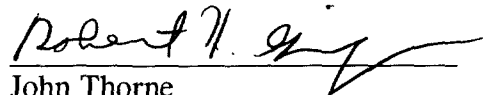
Internet service to key East Coast markets" and the completion of other partnerships. News Release, "@Home Network Reports First Public Quarter Results," http://www.home.net/corp/news/pr_971016_01.html. Comcast already has deployed high-speed Internet access in many parts of Pennsylvania, New Jersey, and Maryland. <http://www.home.net/home/availability/comcast.html>. Hughes' DirecPC service boasts nationwide availability of Internet access at speeds three times faster than ISDN; DirecPC notes that its satellite system does not endure "crowded computer networks and outmoded telephone systems that are constantly flooded or clogged." <http://www.direcpc.com/about/index.html>. Finally, Microsoft founder Paul Allen recently bought a 49% stake in Metricom, which is rolling out a wireless network with ISDN speeds. Furman Selz, "MCOM: Metricom Reports Third Quarter," Oct. 31, 1997 ("Metricom's . . . service offers subscribers unlimited wireless access to the Internet for a low, flat fee . . . without the use of phone line.").

Applicant requests that the Commission establish the following schedule, with all dates measured from the date of filing:

Comments from Interested Parties:	30 days
Reply Comments from Department of Justice:	50 days
Bell Atlantic's Reply Comments:	60 days
FCC Decision:	90 days

Bell Atlantic now is in the final planning process for its broadband deployment. This schedule permits fair opportunity for comment for all interested parties, but also gives Bell Atlantic the opportunity to plan a more aggressive and more efficient roll-out of broadband services if relief is granted.

Respectfully submitted,



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